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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 743

Case No. 803: ARBESU

Against: The Secretary General of the International Civil Aviation Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posada Montero, Vice-President, presiding; Mr. Hubert Thierry; Mr. Mikuin Leliel Balanda;

Whereas at the request of Nizida Arbesu, a former staff member of the International Civil Aviation Organization (hereinafter referred to as ICAO), the President of the Tribunal, with the agreement of the Respondent, successively extended the time-limit for the filing of an application to the Tribunal to 30 November 1992, 31 January, 30 April, 31 July and 31 October 1993, 31 January, 29 April and 31 July 1994;

Whereas, on 27 July 1994, the Applicant filed an application requesting the Tribunal:

"(a) *To find* that in accordance with the rules governing post adjustment classifications, Applicant is entitled to remuneration at the professional level of P-3 effective 18 November 1986;

(b) *To find* that the Applicant had, as of 18 November 1986, an acquired right to be remunerated at the professional level of P-3, which the Secretary-

General has failed to respect;

(c) *To order* the Respondent to rescind the decision denying the Applicant's prior adjustment, and, further, *to fix* the appropriate amount of compensation payable to her for the abuse of authority which [she] was subject to; the harassment and intimidation which she was subject to; the threats and verbal abuse which she was subject to; as well as the violation of the *Universal Declaration of Human Rights of the United Nations*, Articles 1, 5, and (23), and staff regulation 2.2."

Whereas the Respondent filed his answer on 9 March 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of ICAO on 21 October 1963 as a Typist at the G-2 level on a temporary basis. With effect from 16 April 1965, she was granted a fixed-term appointment as a Typist at the G-3 level in the Language Branch, Library and Archives Section, Bureau of Administration and Services. On 1 January 1966, the Applicant was promoted to the G-4 level, and on 16 June 1967 she was granted a permanent appointment. Her post was upgraded to the G-5 level, and the Applicant was promoted to the upgraded post on 1 July 1977. On 9 February 1983, the Applicant was transferred to the post of Library Clerk, at the G-5 level. This post was upgraded to the G-6 level, and the Applicant was appointed to the upgraded post with effect from 16 October 1984. On 18 November 1986, she was assigned on loan to the post of Terminology Clerk, Terminology, Reference and Documentation Section, at the G-6 level. On 30 April 1992, the Applicant retired.

On 3 May 1990, the Applicant wrote to the Secretary General to "familiarize" him with her situation. She noted that she would be retiring within two years, after service of 29 years, and that during this time she had "not been considered for any professional positions" for which she had applied. She requested a promotion "to one of the many professional posts currently vacant in the Language and Publications Branch (LPB)".

In a note dated 11 June 1990, the Chief of the Language and Publications Branch asked the Chief of the Establishment and Studies Section for his views on the Applicant's situation. In a reply dated 18 June 1990, the latter stated that "It is incorrect of [the Applicant] to say that she has not been considered for any of the professional positions for which she has applied. She has been considered for all of them, as well as a large number of General Service posts, but has unfortunately not been selected for them." He added that "a review of her file does not show her to be qualified for existing LPB vacant posts". In a memorandum to the Secretary General, dated 9 July 1990, the Chief of the Establishment and Studies Section explained the Applicant's situation, noting that he had reviewed the Applicant's work and had concluded that "it is largely clerical and I do not believe that there is scope for classifying her current post into the 'P' category".

On 23 May 1991, the Applicant wrote again to the Secretary General, reviewing the nature of her work and requesting "to be regraded to the P-3 level with effect from 1986, in recognition of the duties I have been fulfilling since that time". She requested a written reply within two weeks. On 18 June 1991, the Chief, Personnel Branch, in response to a request from the Secretary General, advised him that the Applicant's request to be regraded to the P-3 level "was not supported by her supervisors".

In a letter to the Secretary General dated 25 June 1991, the Applicant noted that she had not received a reply to her earlier letter. She informed him that she would assume that meant a negative decision had been taken and that her request had been rejected, and she asked him to review this decision. On 9 July 1991, the Applicant lodged an appeal with the Advisory Joint Appeals Board. On 22 June 1992, the Board adopted its report. Its conclusions read, in part, as follows:

"***CONCLUSIONS***

121. The Board concludes that it is not within its competence to rule on whether the Appellant's post should be reclassified to a higher level. Furthermore, it found no evidence to indicate that, in not regrading the Appellant to the P-3

level, the Secretary General had acted in an improper manner. Consequently, the Board is of the unanimous opinion that the appeal fails.

122. Nevertheless, the Board considers that the delay in formalizing the Appellant's transfer from the Library to TRD [Terminology, Reference and Documentation] and the subsequent lack of an agreed post description did not help to resolve the matter, although the Appellant herself must bear some responsibility for this situation. The Board is consequently of the opinion that a full and proper classification of the Appellant's duties should still be carried out, with her cooperation and, if appropriate, any reclassification should be implemented retroactively.

123. The Board believes that any continuation of this appeal at the level of the United Nations Administrative Tribunal would be pointless, and therefore declares this appeal 'frivolous' in the terms of Article 7, paragraph 3, of the Statute of the United Nations Administrative Tribunal. In so doing, the Board would not wish the Appellant to be in any way offended by its use of the term 'frivolous', which the Board interprets as meaning 'futile, not having any basis in facts and in law', and therefore bound to fail before the United Nations Administrative Tribunal.

124. As a general point, the Board is of the view that the Organization should take steps to ensure that staff members who are assigned new duties, or whose duties are significantly changed, should not be employed for extended periods without post descriptions and appropriate classifications."

On 9 July 1992, the Secretary General accepted the recommendation of the Advisory Joint Appeals Board as follows:

"I have carefully studied Opinion No. 98 issued on 22 June 1992 in the appeal of Mrs. N. Arbesú, and wish to thank the Board for its careful consideration of the case.

I accept the Board's unanimous recommendation that the appeal be rejected, and agree that the case is 'frivolous' within the meaning of Article 7, paragraph 3, of the Statute of the United Nations Administrative Tribunal. Due note has been taken of the Board's recommendation in paragraph 122 of its 'Opinion' that a full classification of the Appellant's duties be carried out and if appropriate, any classification be implemented retroactively; suitable action in this respect will be taken."

The Applicant was informed of this decision on 9 July 1992.

On 27 July 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was deprived of numerous promotions for which she was qualified in accordance with the ICAO Service Code and Staff Regulations.

2. The Applicant was subjected to discrimination in the area of promotion and appointment to a professional post, in violation of articles 4.1 and 4.5 of the ICAO Staff Regulations.

Whereas the Respondent's principal contention is:

The complaint is not receivable under article 7, paragraph 3 of the Statute, as found by the Advisory Joint Appeals Board to be "frivolous".

The Tribunal, having deliberated from 25 October to 22 November 1995, now pronounces the following judgement:

I. The Applicant entered the service of the International Civil Aviation Organization, hereinafter referred to as ICAO, on 21 October 1963 as a Typist at the G-3 level. In 1964, she was transferred to the Library and Archives Section and in 1967 she received a permanent appointment. She was assigned on loan to the Terminology, Reference and Documentation Section in November 1986 where she held the post of Library Clerk at the G-6 level. She retired in April 1992.

II. Considering the fact that she had performed duties belonging in the professional category, she maintained that her post should be retroactively regraded at the P-3 level. The case was submitted to the Advisory Joint Appeals Board, which unanimously considered that the case was "frivolous" in the terms of article 7, paragraph 3, of the Statute of the Administrative Tribunal. After the Secretary General accepted this recommendation, the Applicant submitted the matter to the Tribunal.

III. In her complaint, she maintains that, having carried out tasks that she considered to be among those that should be performed by a staff member in the professional category, her post should, therefore, be retroactively classified at the P-3 level.

IV. The Respondent contends that this complaint is not receivable on the basis of article 7, paragraph 3, of the Statute of the Tribunal. As to the merits, the Respondent maintains that the Applicant has supplied no evidence of any irregularities in the decision she contests and therefore the Tribunal should reject her application.

The Respondent adds that, in conformity with the ICAO Staff Regulations, only the Secretary General has the authority to determine the classification of posts according to the nature of the duties and responsibilities required. It follows, therefore, that the application should be rejected on this ground also.

V. The Tribunal notes, first, that the Applicant does not question the procedure followed by the Advisory Joint Appeals Board in considering her case. The Applicant maintains only that, given that she performed duties normally assumed by staff members in the professional category, the post she held should be regraded retroactively to that level.

The Tribunal states that the Advisory Joint Appeals Board characterized the Applicant's request as "frivolous" in the terms of article 7, paragraph 3, of the Statute of the Tribunal which reads:

"In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous."

VI. For these reasons, the Tribunal declares that the application is not receivable under article 7, paragraph 3 of its Statute.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

New York, 22 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary